

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL BOONE,

Plaintiff,

v.

JOHN ALLABEN,

Defendant.

CASE NO. C21-1562JLR

ORDER DENYING MOTION TO  
CERTIFY QUESTIONS TO THE  
WASHINGTON STATE  
SUPREME COURT

**I. INTRODUCTION**

Before the court is Defendant John Allaben's motion to certify questions to the Washington State Supreme Court. (Mot. (Dkt. # 44); Reply (Dkt. # 47).<sup>1</sup>) Plaintiff Michael Boone opposes the motion to certify. (Resp. (Dkt. # 46).) The court has considered the motion, all materials submitted in support of and in opposition to the

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<sup>1</sup> On May 10, 2022, the court denied Mr. Boone's request, contained in the same motion, to reconsider its April 25, 2022 order granting Mr. Boone's motion for reconsideration. (See 5/10/22 Order (Dkt. # 45); 4/25/22 Order (Dkt. # 42).)

1 motion, and the governing law. Being fully advised, the court DENIES Mr. Allaben's  
2 motion to certify questions to the Washington Supreme Court.

## 3 II. BACKGROUND

4 The factual and procedural background of this case is set forth in detail in the  
5 court's since-vacated order granting Mr. Allaben's motion for summary judgment. (*See*  
6 3/21/22 Order (Dkt. # 36) (vacated on reconsideration by 4/25/22 Order).) Therefore, the  
7 court discusses below only the background relevant to the instant motion.

8 This case arises from an ill-fated encounter between Mr. Allaben and Mr. Boone  
9 on July 7, 2019. (*See generally* Am. Compl. (Dkt. # 23).) Mr. Boone alleges that after  
10 he "staggered and accidentally touched" Mr. Allaben's wife, Carolynne Allaben, Mr.  
11 Allaben "pushed [Mr. Boone] from behind as [Mr. Boone] was approximately 10 feet  
12 forward from the accidental touching." (*Id.* ¶¶ 2-3.) He further alleges that Mr.  
13 Allaben's "actions were unintentional and were not meant to cause harm" and that Mr.  
14 Allaben "either committed negligence, gross negligence, or recklessness" when he  
15 pushed Mr. Boone. (*Id.* ¶¶ 5, 7.)

16 On March 21, 2022, the court granted Mr. Allaben's motion for summary  
17 judgment. (3/21/22 Order.) In that order, the court agreed with Mr. Allaben that Mr.  
18 Boone's claim was properly categorized as a claim for battery, an intentional tort, rather  
19 than a claim for negligence. (*Id.* at 9.) Mr. Allaben's motion relied in part on *Swank v.*  
20 *Valley Christian School*, 374 P.3d 245 (Wash. Ct. App. 2016), *aff'd in part, rev'd in part*  
21 *on other grounds*, 398 P.3d 1108 (Wash. 2017), in which the Washington State Court of  
22 Appeals held that "[a] plaintiff cannot avoid the battery limitation period 'by disguising

1 the real cause of action in a different form.” (MSJ (Dkt. # 25) at 6-7); *Swank*, 374 P.3d  
2 at 256 (quoting *Boyles v. City of Kennewick*, 813 P.2d 178, 179 (Wash. Ct. App. 1991)).  
3 The court concluded that because it was undisputed that Mr. Allaben intended to push  
4 Mr. Boone, that conduct amounted to a battery—despite Mr. Boone’s attempt to plead a  
5 negligence claim—and was thus barred by Washington’s two-year statute of limitations  
6 for intentional torts. (3/21/22 Order at 8-9 (citing RCW 4.16.100(1)).)

7 Mr. Boone moved for reconsideration of the court’s March 21, 2022 order.  
8 (Boone MFR (Dkt. # 38).) He argued that under the Washington Supreme Court’s  
9 decision in *Beltran-Serrano v. City of Tacoma*, 442 P.3d 608 (Wash. 2019), a battery  
10 claim does not preclude a negligence claim that arises from the same incident. (Boone  
11 MFR at 3-4.) Indeed, the *Beltran-Serrano* Court held that because “ordinary negligence  
12 principles apply in situations that involve both a claim of battery and a duty to act  
13 reasonably,” the fact that the plaintiff may have had a valid intentional tort claim “ha[d]  
14 no bearing on the viability of his negligence claim for violation of the duty to act  
15 reasonably.” *Beltran-Serrano*, 442 P.3d at 612-13. This court agreed with Mr. Boone  
16 that under *Beltran-Serrano*, a plaintiff can pursue a negligence claim even where the  
17 defendant’s use of force was indisputably intentional. (*See* 4/25/22 Order at 3-6.) The  
18 court granted Mr. Boone’s motion for reconsideration and vacated its order granting  
19 summary judgment to Mr. Allaben. (*Id.* at 8.)

20 Mr. Allaben then filed the instant motion. In the portion of the motion considered  
21 in this order, Mr. Allaben asks the court to certify three questions to the Washington  
22 Supreme Court:

- 1 1. “[W]hether and how the Washington Supreme Court’s opinion in
- 2 [Beltran-Serrano] applies outside the law enforcement context;”
- 3 2. “[W]hether, after *Beltran-Serrano*, a plaintiff can avoid the limitation
- 4 period for an intentional tort by arguing the defendant’s understanding or
- 5 handling of the situation preceding the intentional tort is negligent;” and
- 6 3. “[W]hether the decision in *Beltran-Serrano* means that every intentional
- 7 tort has an inseparable negligence component for the same act.”

8 (Mot. at 1.) The motion is now ripe for decision.

### 9 III. ANALYSIS

10 Under RCW 2.60.020, “[w]hen in the opinion of any federal court before whom a  
11 proceeding is pending, it is necessary to ascertain the local law of [Washington] in order  
12 to dispose of such proceeding and the local law has not been clearly determined, such  
13 federal court may certify to the [Washington] supreme court for answer the question of  
14 local law involved and the supreme court shall render its opinion in answer thereto.” The  
15 certification process serves the important judicial interests of efficiency and comity: as  
16 noted by the United States Supreme Court, certification saves “time, energy and  
17 resources and helps build a cooperative judicial federalism.” *Lehman Bros. v. Schein*,  
18 416 U.S. 386, 391 (1974). The decision whether to certify a question to the Washington  
19 Supreme Court rests in the discretion of the federal court considering certification.  
20 *Micomonaco v. Washington*, 45 F.3d 316, 322 (9th Cir. 1995) (citing *Lehman Bros.*, 416  
21 U.S. at 391). Even when state law is unclear, the court is not obligated to use the  
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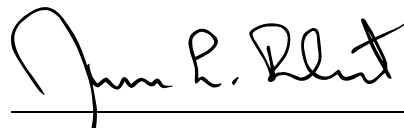
1 certification process. *Riordan v. State Farm Mut. Auto. Ins. Co.*, 589 F.3d 999, 1009 (9th  
2 Cir. 2009) (citing *Lehman Bros.*, 416 U.S. at 390).

3 The court concludes that the local law of Washington is sufficiently clear  
4 following *Beltran-Serrano* and thus certification of Mr. Allaben's proposed questions is  
5 not warranted. Although *Beltran-Serrano* involves police misconduct, the Washington  
6 Supreme Court's discussion of the relationship between intentional tort and negligence  
7 claims is grounded in general principles of tort law. See *Beltran-Serrano*, 442 P.3d at  
8 611-13. The court concludes, therefore, that *Beltran-Serrano*'s holding that intentional  
9 tort and negligence claims may coexist is not limited to the law enforcement context.  
10 Moreover, *Beltran-Serrano* explains that *Boyles*—upon which *Swank* relied—does not  
11 preclude “overlapping claims of negligence and assault and battery” and, indeed,  
12 recognizes that a plaintiff may pursue both battery claims and negligence claims where  
13 the factual allegations of the complaint support both claims. *Id.* at 613 (discussing  
14 *Boyles*, 813 P.2d at 179). Because the local law is not unclear, the court declines to  
15 certify Mr. Allaben's proposed questions and DENIES his motion to certify.

#### 16 IV. CONCLUSION

17 For the foregoing reasons, the court DENIES Mr. Allaben's motion to certify  
18 questions to the Washington State Supreme Court (Dkt. # 44).

19 Dated this 24th day of May, 2022.

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22 JAMES L. ROBART  
United States District Judge